

REMARKS

Claims 1-2 are rejected in the Action under 35 U.S.C. §102(b) as anticipated by the disclosure of Harada et al. (US 6,440,607) (hereinafter: Harada). Harada is insufficient, however, to support a case of anticipation of the rejected claims.

Harada discloses a nickel-hydrogen secondary battery comprising a positive electrode containing a nickel compound (e.g., nickel hydroxide); a negative electrode containing a hydrogen absorbing alloy which can contain aluminum, a binder and an electrically conductive material; a separator; and an electrolyte, wherein the binder contains a carboxylated styrene-butadiene copolymer latex.

Claim 1 of the present application recites a nickel metal hydride storage battery comprising a positive electrode comprising nickel hydroxide as a active material, a negative electrode comprising a hydrogen absorbing alloy containing aluminum, a separator and an alkaline electrolyte, wherein a complex-forming agent which forms a complex with aluminum is included in the negative electrode. Claim 2 recites that the complex-forming agent is an aromatic carboxylic acid.

The position of the Office is understood to be that the nickel-hydrogen secondary battery of Harada includes each of the

elements of the nickel-hydride battery of the present invention as recited in claims 1 and 2 of the present application, the carboxylated styrene-butadiene copolymer latex contained as a binder in the negative electrode of the battery of Harada being a complex-forming agent which forms a complex with aluminum as recited in claim 1 and, more particularly, being an aromatic carboxylic acid complex-forming agent as recited in claim 2.

The rejection of claims 1 and 2 is not proper. There is nothing in Harada to suggest that the carboxylated styrene-butadiene copolymer latex disclosed therein functions as a complex-forming agent which forms a complex with aluminum and the Office has provided no evidence or reasoning to show that the carboxylated styrene-butadiene copolymer latex inherently functions as a complex-forming agent which forms a complex with aluminum. The Office has the burden of initially providing such evidence or reasoning.

Additionally, inherency which will support a case of anticipation under 35 U.S.C. § 102 must be a certainty - not a possibility.

Regarding claim 2, the carboxylated styrene-butadiene copolymer latex of Harada cannot reasonably be interpreted as being an aromatic carboxylic acid as required by claim 2.

Removal of the 35 U.S.C. § 102 rejection of claims 1 and 2 over Harada is respectfully solicited.

Claims 3-4 are rejected under 35 U.S.C. §103(a) as being unpatentable over Harada in view of Tani et al. (US 6,649,304) (hereinafter: Tani).

Tani is cited as teaching a layer comprising a hydroxide or oxide of an element selected from calcium, strontium, scadium, yttrium, lanthanoids and bismuth that is formed on the surface of the positive electrode active material. The Examiner's position is that it would be obvious, in view of the teachings of Tani, to provide a layer of hydroxide or oxide of calcium, strontium, scadium, yttrium, lanthanoids or bismuth on a surface of the positive electrode active material of the battery of Harada.

Tani fails to overcome the insufficiencies of Harada as explained above to support a case of anticipation of the battery of the present invention as recited in claims 1 and 2. Since claims 1 and 2 are patentable over Harada, claims 3 and 4, which depend on claims 1 and 2, respectively, are also patentable.

Removal of the rejection of claims 3 and 4 over Harada in view of Tani is also respectfully solicited.

A notice of allowability of the present application is believed to be in order and is requested.

The foregoing is believed to be a complete and proper response to the Office Action dated April 7, 2005, and is believed to place this application in condition for allowance. If, however, minor issues remain that can be resolved by means of a telephone interview, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number indicated below.

In the event that this paper is not considered to be timely filed, applicants hereby petition for an appropriate extension of time. The fee for any such extension may be charged to our Deposit Account No. 111833.

In the event any additional fees are required, please also charge our Deposit Account No. 111833.

Respectfully submitted,

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